

PRE-APPEAL BRIEF REQUEST FOR REVIEW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:)
Durham et al.) Examiner: Kari L. Schmidt
Application No: 10/809,315) Art Unit: 2139
Filed: March 24, 2004) Confirmation No.: 6493
For: SHARED CRYPTOGRAPHIC KEY IN)
NETWORKS WITH AN EMBEDDED AGENT)
_____)

Mail Stop AF
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

In response to the Final Office Action mailed December 21, 2007, and the Advisory Action mailed March 17, 2008, and in conjunction with the Notice of Appeal filed concurrently herewith, Applicants respectfully request review of the Final rejection of the claims of the above referenced application in view of the following.

REMARKS

Claims 1-38 are pending in the above-referenced patent application, of which claims 1, 11, 22, and 29 are independent claims. These independent claims are the main subject of this Request. These claims were finally rejected in the Final Office Action of December 21, 2007, under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2004/0039924 of Baldwin et al. (hereinafter "Baldwin"), which was maintained in the Advisory Action of March 17, 2008. The unresolved issues in this case focus on the application of Baldwin to Applicants' claimed invention, which is the focus of the discussion herein.

As a first matter, Applicants respectfully submit that the Office has not followed the guidelines of proper examination of Applicants' patent application. Proper examination results when the Office first establishes the scope of the claimed subject matter by giving the claims their broadest reasonable interpretation consistent with the specification. See MPEP § 2111. After determining the scope of the claimed subject matter, the Office should compare the claimed subject matter with the prior art to determine if the claimed subject matter is explicitly taught, or would have been obvious to one of skill in the art. See MPEP § 2106(VI). A reference may be relied on in rejecting a claim "for all that it would have **reasonably suggested** to one having ordinary skill in the art...." See MPEP § 2123. Rather than follow proper examination, the Office, as evidenced by the discussion in the Advisory Action, gave the "broadest reasonable interpretation" to the **cited reference**, and then determined that the interpretation of the reference **read on Applicants' claims**. As explained above, proper examination results when the Office determines the broadest reasonable interpretation of **Applicants' claims**, and then determines whether **that** interpretation **reads on the cited references**. There is a difference with a distinction between the two approaches. By giving the cited reference a broadening interpretation, the Office is looking to use impermissible hindsight to attempt to make the prior art look like the claims, rather than determining whether the claims read on what one of skill in the art would understand from the reference. By giving a broadening interpretation of the cited reference and attempting to read it onto Applicants' claims, the Office has expanded the interpretation of **both** the cited reference and Applicants' claims beyond what would reasonably be understood by one of skill in the art.

Additionally, as a second matter, the Office has erred in its interpretation of Applicants' claims by not giving weight to the plain meaning of Applicants' claim terms, by interpreting the

claims according to an unsupported interpretation, and by interpreting the claims not consistent with the specification. The Office, per the Continuation Sheet in the Advisory Action, interpreted "not directly accessible to a host processor" as --not easily accessible to a host processor--. The Office based this interpretation on Webster's II New Riverside dictionary. Applicants first note that the Office has failed to provide any basis for relying on the particular dictionary used, or why the Office relied only on one of multiple interpretations provided by the dictionary for this term. Applicants did not suggest the use of the dictionary in their Specification. The Office has offered no logic or reasoning to support reliance on this dictionary instead of resort to the Specification. There is no reason to believe the particular dictionary definition arbitrarily selected has any bearing on the claims. The definition selected by the Office is inconsistent with Applicants' Specification, which refers to a memory that the host processor cannot access. See, for example, Specification at paragraphs [0018] and [0044].

Applicants' previous Responses focused on the claim language directed to a storage not directly accessible to the host **processor** on the client (claims 1 and 29), a network link transparent to the host processor and the OS (claim 11), and a communication channel accessible to the chipset and not the host platform (claim 22).

Baldwin, rather than anticipating Applicants' claims, teaches away from such claim limitations, having storage only **directly accessible** to the host processor, and requiring the use of the host processor in its operations. Whether or not, as the Office asserts, the information in Baldwin's memory is somehow "hard" for the processor to access because it must be in a different state, **the Office admits the memory in Baldwin is accessible to the processor**, not inaccessible as in Applicants' claims.

The Office Actions assert Baldwin's CryptoEngine, which

performs in a restricted mode that is only accessible during normal operation by transferring control from a normal mode of the processor to a restricted mode of the processor via CryptoGate. The examiner notes a 'restricted mode' is not directly accessible to a host processor on a client.

Applicants note that the argument is self-conflicting. The Office Actions assert that the "restricted mode" is not directly accessible to the host processor, and yet also acknowledges that it is the very same host processor that executes in the restricted mode. Applicants request clarification on how a processor becomes a different processor when operating in a restricted mode. The argument by the Office is akin to asserting that a person suffering from multiple

personality disorder is actually multiple different people, because the personalities are dissociative. See http://en.wikipedia.org/wiki/Multiple_personality_disorder. Such logic is flawed. Applicants' claims recite a storage not accessible to a processor, not a storage that can only be accessed by a processor in a special state (i.e., by a different personality). Note that the processor accessing the storage "in a restricted mode" means the storage **is accessible to the processor**, and **does not** mean that the storage is **not accessible** to the processor. Applicants respectfully submit that whether the host processor accesses the storage disclosed in Baldwin in "normal mode" or "restricted mode," **the host processor still directly accesses the storage**, and thus in contrast to what is claimed, the storage cannot be a storage not directly accessible to the host processor.

To reiterate what Applicants previously submitted, Baldwin fails to disclose or suggest the invention as recited in the independent claims, and in fact **teaches away** from what is claimed. As explicitly stated in Baldwin's "Objectives of Present Invention" section, paragraphs [0009] to [0013], the teachings of Baldwin are directed to providing "a system that permits for computer device authentication that requires exactly no more hardware than is found in a commodity-class commercial personal computer." Although perhaps somewhat vague in its standards, the reference describes "a minimum of hardware" as being the intended implementation platform for its systems. See also paragraph [0015]. The reference goes to great detail to describe a system in which a reboot sequence and an SMM (system management mode) are used to provide secure operations. See "Key aspects of the present invention" as set forth in paragraphs [0017] to [0029]. Baldwin explicitly limits its application to the **SMM implementation** described. As is understood by one of skill in the art, although SMM may be outside the context of a **host operating system**, SMM executes **on the host processor** of the system. Thus, executing in SMM explicitly **requires** that the host processor have access to all of the resources used to provide the security. Thus, even assuming independence from the host OS, SMM and the solutions presented in Baldwin prevent independence from the host processor. More particularly, one of skill in the art would understand that Baldwin explicitly requires the host hardware platform including the host processor to have access to the cryptographic keys and the secure communication channels. Without such access, Baldwin's described system **could not be implemented in the manner described**. That is, SMM as described only works when the host processor has access to the resources, such as storage in which the keys are stored. Such a

requirement is at least one reason Baldwin asserts in paragraph [0015] to suggest that allowing the host hardware to have such access provides only a minimal security risk. That security risk described was in reference to the fact that the processor, in the secure mode, was accessing the secure data. Such a statement would be meaningless if the storage was actually inaccessible to the processor, because then the security risk discussed would not exist. Thus, the teachings of Baldwin are directly contrary to what is claimed, and the reference is inapplicable in rejecting Applicants' claims.

In direct contrast to what is discussed in Baldwin, Applicants' claims all recite features directed to something inaccessible, transparent, or otherwise independent from the host processor. See above: "a storage" in claims 1 and 29, "a network link" in claim 11, and "a communication channel" in claim 22. Thus, Baldwin is incapable of disclosing or suggesting at least one feature of the claimed invention, and so fails to support an anticipation rejection of the independent claims as per MPEP § 2131.

For the foregoing reasons, Applicants submit that the rejection as set forth in the Office Actions is improper. Applicants respectfully requests that the rejection be withdrawn and the claims allowed.

Respectfully submitted,
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN, LLP

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/Vincent H. Anderson/
Vincent H. Anderson
Reg. No. 54,962
Attorney for Applicant

1279 Oakmead Parkway
Sunnyvale, CA 94085-4040
(503) 439-8778

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below.

Date: 3/21/2008

/Katherine Jennings/
Katherine Jennings